IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ADMIRALTY & VICE ADMIRALTY JURISDICTION

ADMIRALTY SUIT NO.7 OF 2004.

The Indian Seamless Metal Tubes Ltd. ...Plaintiff.

vs.

Hina Shipping & Forwarding (M) Pvt.Ltd. ...Defendant.

Mr.Rahul Narichania with M.R.Khatri, for Plaintiff.

Dr.V.V.Tulzapurkar with D.S.Purandare i/b. M/s.Crawford Bayley & Co. for Defendant.

CORAM: D.K.DESHMUKH,J.

DATED: 21st June, 2006.

P.C.:-

1. In this suit the plaintiff is claiming a decree in the amount of US dollar 34,377.28 with interest against the defendant. According to the

averments in the plaint, the plaintiff had shipped two consignments of seamless metallic pipes for carriage from Mumbai to port Mina, Abu Dhabi under two bills of lading. The bills of lading were issued by the defendant. The freight was prepaid to the defendant. According to the plaintiff, the consignments were carried on board the vessel m.v. PISHWA. According to the plaintiff's allegations, after the cargo reached the port of discharge, the defendant informed the plaintiff that the cargo could not be discharged as the crew members on board the vessel m.v. Pishwa had forcefully taken over the cargo for non payment of their wages. According to the plaintiff, in order to take delivery of the consignments the plaintiff was forced to pay US dollar 11,900 and US dollar 18,794 for getting cargo released. It is only after making this payment, the plaintiff could get delivery of the cargo. The suit of the plaintiff is principally for recovery of this amount from the defendant. The defendant has resisted the suit by filing written statement. According to the defendant, the suit is not maintainable against the defendant because he has signed the bills of

lading as agent of the principal/carrier. It is contended that the suit is not maintainable against the defendant because the defendant had signed the contract as agent of the principal and secondly because of clause 3 of the bills of lading the suit for enforcing any claim of bills of lading can be filed in the country where the carrier is having his principal place of business. The carrier of the cargo of the plaintiff does not have his principal place of business in India. Therefore, the suit is not maintainable in India. The defendant has also denied its liability for other reasons also. By order dated 10.6.2005, this court has framed the following issues:

> "1. Whether the defendant proves that the present suit is barred by the provisions of S.230 and 234 of the Indian Contract Act,1872 ?
> 2. Whether the defendant proves that under the suit contract the defendant is not liable to pay any amount to the plaintiff ?
> 3. Whether this court has jurisdiction to entertain and try the suit ?

4. Whether the defendant proves that the present suit is barred by virtue of non-compliance of provisions of Rule 6 of Article 111 of Schedule to Carriage of Goods by Sea Act,1925 ?

5. Whether the defendant proves that the present suit is barred by virtue of exemption, immunities conferred on the defendant under the Carriage of Goods by Sea Act,1925 ?

6. Whether the plaintiffs prove that the plaintiff is entitled to U.S. $ 30,694 or any other amount or interest at rate of 12% p.a. or otherwise against the defendant ?

7. Whether the defendant proves that the plaintiff is not entitled to the suit claim because it is not related to any act of omission of commission on the part of the defendant?

8. Relief if any ? “

Issue nos. 1, 2 and 3 are in relation to the maintainability of the suit in this Court and therefore, in my opinion, they are to be decided first.

2. The suit of the plaintiff is on the basis of bills of lading which are signed by the defendant. It is common ground that the defendant has signed the bills of lading as an agent. So far as the pleadings are concerned, the learned Counsel appearing for the plaintiff pointed out paragraph 8 of the plaint. Paragraph 8 of the plaint reads as under:-

> “8. The Plaintiffs, therefore, submit that they are entitled to approach the Hon'ble Court for recovery of their claims on account of the breaches committed by the Defendants for recovery of their amounts. The Plaintiffs further submit that even though the Bills of Lading have been signed by the Defendants, as agents, they are liable and responsible as they acted independently. The Defendants have indeed as an independent operator received freight from the Plaintiffs under the said Bills of lading.”

Perusal of the above quoted paragraph shows that the plaintiff admits that the defendant has signed the bills of lading as agent. But according to the

plaintiff though the defendant has signed as agent, the defendant acted independently. The defendant has dealt with paragraph 8 of the plaint in paragraph 11 of the written statement. Paragraph 11 of the Written statement reads as under:

> “11. With reference to paragraph 8 of the plaint, Defendant categorically denies commission of any breach whatsoever by Defendant viz-a-viz Plaintiff. The Defendant denies that Plaintiff is entitled to approach this Hon'ble Court for recovery of alleged claim of Plaintiff. The Defendant submits that nothing is due or payable by Defendant to Plaintiff, and this suit deserves to and should be dismissed with compensatory costs. The Defendant categorically denies that Defendant has acted independently in issuance of said Liner Bills of Lading and/or Bills of Lading Nos.01 and/or 02, as alleged or otherwise. The Defendant categorically denies that Defendant has acted as independent operator in receipt of freight from Plaintiff under said Liner Bill of Lading and/or Bills of Lading Nos.01

> and 02, as alleged or otherwise. The Defendant clarifies and submits that said Liner Bill of Lading and Bills of Lading Nos.01 and 02, ex-facie, expressly set out that the same have been issued by Defendant as agent of the Carrier, Sun Chartering & Shipping APS, Denmark. Also, Defendant reiterates averments contended at outset hereinabove."

Thus, according to the defendant, the defendant has signed the bills of lading as agent and the defendant has also disclosed the name of the principal i.e. carrier. So far as the evidence is concerned, the plaintiff has examined Mr.Ajith Fulambrikar as his witness. In paragraph 8 of the examination in chief the said witness states thus:-

> "At the time when the Bills of lading were issued the Defendants did not disclose the principals name to us."

So far as cross examination is concerned, answers of this witness given to question nos.29 to 35 are

relevant and they are as follows:-

> “29. **Question**: Is it correct to say that Bills of Lading were issued by Defendant in their capacity as agent?
>
> **Answer**: Yes.
>
> 30. **Question**: When you contracted with Defendant you were told that the consignment was to be carried aboard the vessel m.v.”Pishwa”?
>
> **Answer**: Yes.
>
> 31. **Question**: Did you make any inquiries at that time as to who were the owners or carriers ?
>
> **Answer**: Yes.
>
> 32. **Question**: Whom did you ask?
>
> **Answer**: Our Clearing House Agent and Mr.Rafat Khan of the Defendant.
>
> 33. **Question**: Did you make these inquiries orally or in writing?
>
> **Answer**: Orally.
>
> 34. **Question**: And did they give you the required information?
>
> **Answer**: Yes they did.
>
> 35. **Question**: Do you remember who were the owners?
>
> **Answer**: No. I only remember that it was a chartered vessel.”

It is clear from the answers to question no.32 that the witness of the plaintiff inquired from Mr.Rafat Khan of the defendant the name of the owner of the vessel who was to carry the consignment and he states that Mr.Rafat Khan gave him the required information. Thus, it is clear from the deposition of the only witness examined on behalf of the plaintiff and the documents on record viz. bills of lading that not only the defendant has signed the bills of lading as agent but the representative of the defendant has disclosed the name of the principal of the defendant to the plaintiff when the consignment was carried aboard the vessel m.v.Pishwa. Section 230 of the Contract Act is relevant which reads as under:-

> “230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.- In the absence of any contract to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.”

If the agent who has signed the contract has disclosed the name of the principal then the agent

cannot be held personally liable and he cannot be sued personally. This Court in the judgment in the case “Midland Overseas vs. m.v.”CMBT Tana” & others, AIR 1999 Bombay 401” has held that in order to maintain the suit against the agent it is necessary for the plaintiff to aver in the plaint that the agent who has signed the contract disclosed to the plaintiff that he is independently signing the contract and that it also must be pleaded that the defendant did not disclose the name of the principal on whose behalf he is signing the contract. If the contract is signed as an agent and the agent has disclosed the name of the principal on whose behalf he has signed the contract then the agent is not liable. In the present case, from the material available on record, it is clear that the defendant has disclosed to the plaintiff, at the time when the consignment was carried aboard the vessel, the name of the carrier i.e. the owner of the vessel on whose behalf the defendant has signed the bills of lading. Therefore, the defendant would be the agent of a disclosed principal and in view of Section 230 of the Contract Act the suit would not be maintainable

against the defendant. According to the defendant clause (3) of the bills of lading stipulates that the dispute arising out of the bill of lading has to be resolved by the Court where the carrier has his principal place of business. Clause (3) reads as under:

> "3. Jurisdiction.
> Any dispute arising under this Bill of Lading shall be decided in the country where the Carrier has his principal place of business, and the law of such country shall apply except as provided elsewhere herein."

The plaintiff though denied that this clause is a part of the bills of lading, has not produced the complete bills of lading. The defendant, however, has produced xerox copy of the bill of lading. Therefore, in my opinion, it can be held that this clause was the part of the bills of lading. The fact that the bill of lading was accepted by the plaintiff which had this clause shows that the plaintiff knew the name of the carrier because without plaintiff knowing the name of the carrier the plaintiff would not have

accepted the bills of lading having such a clause. The owner of the carrier who is abroad is not joined as a party in this suit. In view of this clause the suit also will not be maintainable. For the foregoing reasons, therefore, this suit will not be maintainable against the defendant for any liability arising out of the bills of lading. In any case because of the above quoted clause in the bill of lading this Court will not have the jurisdiction to entertain the suit. Issue nos. 1, 2 and 3 are thus answered accordingly. In my opinion, in view of the answers given to issue nos. 1, 2 and 3, it is not necessary for me to consider the other issues. In the result therefore, the suit fails and is dismissed. The plaintiff is directed to pay costs of the suit to the defendant as incurred by the defendant.